

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0047
Sales Tax for July 1, 2004 to December 31, 2004**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales Tax – Collection and Remittance

Authority: IC § 6-8.1-5-1(b); IC 6-2.5-2-1; IC 6-2.5-6-1; IC 6-2.5-9-3; IC 6-8.1-5-4.

Taxpayer protests the Department's assessment of sales tax.

STATEMENT OF FACTS

Taxpayer is a small business corporation filing 1120S forms at the federal level and the IT-20S at the state level. Taxpayer's business is a family-style sit-down restaurant open for breakfast, lunch, and dinner seven days a week. The Department audited Taxpayer for the period November 1, 2003, to December 31, 2004. Taxpayer collected sales tax for the period on the sales of beverages and meals, but failed to remit the sales tax to the Department. An assessment for sales and use tax was issued. The sales information to compute the sales tax was taken from daily cash register Z-tapes and work papers provided by Taxpayer.

The audit report notes that Taxpayer applied for the Amnesty tax provisions for the tax period November 1, 2003, to June 30, 2004. Taxpayer was billed separately under the Amnesty provisions. The tax due for that period is shown as an Amnesty credit. The protest and audit assessment is based on the period July 1, 2004, to December 31, 2004.

Three hearing dates have been scheduled; Taxpayer asked for a last-minute postponement of the hearing on the first two dates, requesting additional time to prepare documentation. The Department rescheduled both times. Taxpayer did not participate at the hearing held on the third mutually-agreed reschedule date. The findings are based on the information in the file.

I. Sales Tax – Collection and Remittance

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b).

IC 6-2.5-2-1(a) imposes an excise tax, known as the state gross retail tax, on retail transactions made in Indiana. This tax is referred to commonly as "sales tax." IC 6-2.5-2-1(b) states that the person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided by law, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant is required to collect the tax as agent for the state. IC 6-2.5-2-1(b). IC 6-2.5-6-1 states the method and timetable by which a retail merchant is obligated to remit the collected sales tax to the State of Indiana, through the Department of Revenue. IC 6-2.5-9-3 states that a retail merchant has a duty to remit Indiana gross retail tax to the Department, holds those taxes in trust for the State, and is personally liable for the payment of those taxes to the State.

Taxpayer is a registered retail merchant with the State of Indiana and holds a retail merchant's certificate. It is required to calculate and collect sales tax from its customers on the meals purchased. Taxpayer has collected the tax from its customers. Taxpayer has not remitted the sales tax to the Department.

IC 6-8.1-5-4 states that taxpayers must keep books and records so that the Department can review them to determine tax liabilities. IC 6-8.1-5-1(a) states that the Department shall make a proposed assessment of tax liability amounts on the basis of the best information available to the Department. Taxpayer has been afforded the opportunity to present records and information to rebut the proposed assessment. Based on the information presented to the Department, the assessment is upheld.

FINDING

The Department denies Taxpayer's protest.

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